

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF USA MOBILE)	
COMMUNICATIONS, INC. II FOR AN)	CASE NO.
ORDER AUTHORIZING THE ISSUANCE)	89-352
AND SALE OF SECURITIES)	

O R D E R

This matter arising upon petition of USA Mobile Communications, Inc. II ("USA II") filed November 29, 1989 and supplemented January 18, 1990, pursuant to 807 KAR 5:001, Section 7, for confidential protection of Exhibit A to its verified application on the grounds that public disclosure of the information is likely to cause USA II competitive injury, and it appearing to this Commission as follows:

USA II has applied for authority to assume obligations in the form of certain loans and to issue certain notes evidencing the loans to certain accredited investors for the purpose of refinancing some of USA II's existing indebtedness and obtaining additional working capital. Exhibit A to the application, which USA II has petitioned be withheld from public disclosure, includes: (i) the identity of the initial purchaser of the notes and the principal amounts of the loans; (ii) the terms and maturity date of each of the loans; (iii) the repayment terms of each of the loans, including interest rates at which USA II is to repay the loans; (iv) the collateral which USA II will use to

secure the loan; and (v) the conditions precedent to purchase each of the loans.

USA II is a closely held corporation that was formed to acquire and operate radio common carriers in the states of Ohio, Kentucky, and Indiana and to provide both radio common carrier services and two-way mobile communications (not cellular). In its operations in Kentucky, it competes with, among others, Pac Tel Paging, American Paging, Cincinnati Bell, AA First Nationwide Pagers, and A-1 Budget Electropage Systems. USA II contends that disclosure of the information sought to be protected would expose its competitive vulnerabilities, and enable its competitors to implement competitive price structures causing it substantial injury.

The information sought to be protected is not generally known outside of USA II's business, is not generally known by USA II's employees and others involved in its business except on a need-to-know basis, and USA II has sought to protect and preserve the confidentiality of the information by all appropriate means.

807 KAR 5:001, Section 7, protects information as confidential when it is established that disclosure is likely to cause substantial competitive harm to the party from whom the information was obtained. In order to satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

While the petition demonstrates actual competition, it does not establish that the information sought to be protected could be used by USA II's competitors to gain an unfair business advantage. Thus, the information should not be protected from public disclosure.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect from public disclosure Exhibit A to the verified application of USA II be and is hereby denied.

2. The information sought to be protected from disclosure shall be held and retained by the Commission as confidential and proprietary for a period of five working days from the date of this Order, at the expiration of which period it shall be placed in the public record.

Done at Frankfort, Kentucky, this 23rd day of April, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director